

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
:  
IN RE WORLD TRADE CENTER :  
DISASTER SITE LITIGATION :  
:  
:  
:  
:  
:  
:  
-----X

**ORDER SUGGESTING A  
SPECIAL MASTER FOR  
FURTHER PROCEEDINGS**

21 MC 100 (AKH)  
03 Civ. 00007 et al. (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

By separate Opinion issued October 17, 2006, I held that the Defendants remaining in the above-captioned litigation, namely the City of New York, the several contractors engaged directly and indirectly by the City of New York, and the Port Authority, are entitled to limited protection under state and federal doctrines of immunity. This Order addresses the course of further proceedings.

The newly amended master complaints filed on August 18, 2006, pleading all claims in the alternative, fail to provide Defendants or the Court with any clear picture of the precise nature and extent of Plaintiffs' claims. (See Transcript, dated July 26, 2006 ("July 26 Transcript"), 267:8-16.) The master complaints fail to satisfy even the most basic requirement of notice pleading. Fed. R. Civ. P. 8. Although the individual check-off complaints, which Plaintiffs were ordered to complete by October 20, 2006, may alleviate some concerns if they truly provide specificity as to when, where, and for whom the individual Plaintiffs worked, my reading of the master complaints causes me to be skeptical. (See id. at 260:13.) As I told the parties at oral argument, reliance on conclusory allegations will no longer suffice. Defendants have a right a right to know which Plaintiffs are suing them and on what basis. (Id. at 267:8-10.)

The number and complexity of these cases, and the public interest in their speedy resolution, requires a greater urgency in progression, and a closer supervision of proceedings, than heretofore has been possible. The involvement of a Special Master has become necessary. See Fed. R. Civ. P. 53(a)(1)(C).

A Special Master can be empowered to review the parties' disclosures and recommend others, to speed the completion of a database for these cases that I long have been urging the parties to create. Such a database can track every claimed injury and compare the claims to reported diagnoses; define which contractors worked at which area of the World Trade Center sites, for which other contractor or political entity, and when; along with other information of potential relevance that the parties, or a Special Master, may hereafter develop. From the database, a Special Master can recommend appropriate matrices and criteria to organize the facts, and help the Court and the parties to understand and control the mass of facts, rather than to be controlled by their mass and complexity. And from the matrices, it should be possible to launch meaningful settlement discussions, motions and trials to resolve these cases.

The 3,000 and more cases alleging respiratory injury over which I preside are likely to become unmanageable. It is doubtful that any threshold analysis has been given to eliminate claims that probably should not be pressed, and in light of our limited knowledge of how respiratory injuries may become manifest in the future and what causes likely have produced such injuries, it may not be possible for a Plaintiff's lawyer to provide such a threshold analysis. In any event, no imminent procedure comes to mind that may reduce the number of claimants. Indeed, in light of the permission recently given by the New York Supreme Court for additional claimants to continue to file suit against the City, the 3,000 and more cases that presently exist are likely to multiply.

All this argues for special handling, and for a Special Master to enable such special handling. I envision the appointment of a leading expert or experts in mass torts, probably an academic to provide impartiality as well as expertise, who can devote the time and effort that will be necessary. Further, I envision that the Special Master will be empowered to communicate formally and informally with counsel and the Court, and to issue written reports and recommendations as may be appropriate.

I welcome the input of all counsel, favorable and unfavorable, concerning these suggestions, including the fairness of imposing the likely expenses on the parties, compared to the savings that can be expected from economies and efficiencies. See Fed. R. Civ. P. 53(a)(3). The form of the input shall be by joint letter, to be organized by James Tyrrell, to be received by me three business days prior to the conference to be held on November 3, 2006 at 2:00 P.M.

SO ORDERED.

Dated: New York, New York  
October 17, 2006

  
ALVIN K. HELLERSTEIN  
United States District Judge